

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v. // CRIMINAL ACTION NO. 1:09CR61  
CIVIL ACTION NO. 1:11CV77  
(Judge Keeley)

JAMES RAMAGE,

Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
[CRIM. DKT. NO. 99, CIV. DKT. NO. 2], AND DENYING WITHOUT  
PREJUDICE PETITIONER'S § 2255 PETITION AS PREMATURE  
[CRIM. DKT. NO. 96, CIV. DKT. NO. 1]

On May 19, 2011, the Honorable David J. Joel, United States Magistrate Judge ("Magistrate Judge Joel"), issued a Report and Recommendation ("R&R") recommending that the Court deny without prejudice the petition for a writ of habeas corpus filed by the pro se petitioner, James Ramage ("Ramage"), because his pending petition for a writ of certiorari before the Supreme Court of the United States on direct appeal rendered his habeas petition premature. The R&R also specifically warned Ramage that his failure to object to the R&R within fourteen days of receipt of it would result in the waiver of any appellate rights on these issues.<sup>1</sup>

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<sup>1</sup> The failure to object to the R&R not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See

To date, although the Supreme Court of the United States has since denied Ramage's petition for a writ of certiorari (crim. dkt. no. 105), Ramage has failed to object to Magistrate Judge Joel's R&R. Accordingly, the Court **ADOPTS** the R&R in its entirety (crim. dkt. no. 96, civ. dkt. no. 1), and **DENIES** Ramage's § 2255 petition **WITHOUT PREJUDICE** (crim. dkt. no. 96, civ. dkt. no. 1). To seek relief under § 2255, Ramage must re-file a habeas petition.

It is so **ORDERED**.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as Ramage has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

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Thomas v. Arn, 474 U.S. 140, 148-53 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-00 (4th Cir. 1997).

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The Court directs the Clerk to transmit a copy of this Order to counsel of record, and all appropriate agencies, and to mail a copy to the defendant, James Ramage, via certified mail, return receipt requested.

DATED: June 27, 2011.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE